Court of Appeals, State of Michigan

ORDER

Karen McEachin v Mary Lou Sloss

Docket No. 287238

LC No. 06-630368-NI

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Kurtis T. Wilder
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

WILDER, J. respectfully dissents. Pursuant to MCL 500.3151, plaintiff "shall submit to mental or physical examination by physicians" at defendant's request. Under *Muci v State Farm Auto Ins Co*, 478 Mich 178, 194; 732 NW2d 88 (2007), a trial court may only place limitations on defendant's right to request plaintiff to submit to such examinations in order to avoid annoyance, embarrassment, or oppression. The trial court therefore erred when it relied on the proximity of the request to the scheduled trial, and the fact that the period of discovery dictated by the trial court's scheduling order had elapsed when the request was made, to deny defendant's motion to compel the requested examination. However, despite the fact that the trial court erred in this regard, it is a separate question whether the trial court might properly exclude from evidence the results of such examination, on the basis that the probative value of the evidence is substantially outweighed by the unfair prejudice that might result from the fact that defendant made no effort to obtain this discovery within the parameters of the trial court's discovery order. MRE 403.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 24 2008
Date

Sandra Schultz Mengel
Chief Clerk